SUMMONS

CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA

Civil Action No.: 10-C-/47

Charles W. Ferguson

Plaintiff

v.

John Doe, and
National Casualty Company

Defendant

SUMMONS

National Casualty Company
c/o CT Corporation System
5400 D Big Tyler Road
Charleston, WV 25313

To the above named Defendant:

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Nelson M. Michael, plaintiff's attorney, whose address is 126 East Street, P. O. Box 59, Keyser, WV 26726 an answer, including any related counter claim or defense you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

DATED: 10-21-10

TESTE COPY
CIRCUIT COURT SEAL
Clerk Circuit Court of Mineral County, W. Va.

Mary Margaret Rinehart ___
CLERK OF COURT

EXHIBIT
1

IN THE CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA

CHARLES W. FERGUSON,

PLAINTIFF,

vs. CIVIL ACTION NO. 10-C- /07

JOHN DOE, AND NATIONAL CASUALTY COMPANY,

DEFENDANTS.

FILED CLERK CIRCUIT COURT OCT 29 2010 MINERAL COUNTY KEYSER, WV

COMPLAINT

Now come the Plaintiff, Charles W. Ferguson, by and through Nelson M. Michael, and Nelson M. Michael, L.C. his counsel and complains and says follows:

1. That the Plaintiff is currently, and was at all times mentioned herein, a resident of Mineral County, West Virginia.

2. That the Defendant, National Casualty Company, is an insurance company authorized to do business in the State of West Virginia, whose principal office is located at 902 Ann Street, Suite A, Madison, Wisconsin, 25313.

3. That at all times pertinent hereto, National Casualty Company was the insurer of a 1988 Kenworth Truck Tractor owned by the Plaintiff, Charles W. Ferguson, under Policy Number CT00120605.

4. That on or about February 26, 2009, the Plaintiff, Charles W. Ferguson, was operating his 1988 Kenworth Truck Tractor, with a trailer of logs attached, in a southerly direction on State Route 93, in Mineral County, West Virginia.

5. That at a location approximately nine tenths (0.9) of a mile south of the intersection of State Route 93 and U. S. Route 50, the Plaintiff, Charles W. Ferguson, was suddenly confronted with

an automobile, traveling in a northerly direction on State Route 93, but in the southbound lane of said roadway.

6. That at such place and time, the Plaintiff, Charles W. Ferguson, proceeded to take necessary and appropriate evasive action in order to avoid colliding head on into such oncoming vehicle. Because of the limited width of the roadway at that location, Mr. Ferguson's truck dropped into a ditch which parallels the roadway on the southbound side, the trailer of logs jackknifed and the truck and trailer partially upset.

7. That the vehicle traveling in the northerly direction and driven by an unidentified John Doe, avoided colliding with Mr. Ferguson's truck and trailer, but did not stop after Mr. Ferguson's truck upset, and neither Mr. Ferguson, nor any witnesses were able to provide any information to identify such vehicle or the driver thereof.

8. That as a direct and proximate result of such accident, the Plaintiff, Charles W. Ferguson, suffered multiple injuries, including injury to his shoulder, multiple cuts, bruises and abrasions, and developed post traumatic syndrome to the point where his physician and psychiatrist required him to stop driving.

9. That as a result of such injuries, Mr. Ferguson has been unable to work driving a truck since the date of this accident, and he has, accordingly suffered, and continues to suffer, substantial loss of income.

10. That because this accident was caused by an unknown driver, the Plaintiff has filed a claim for damages with his insurance carrier, National Casualty Company, under the uninsured motorist coverage portion of his National Casualty Company Policy No. CT00120605.

COUNT I - Breach of Contract

11. The Plaintiff adopts and incorporated by reference the preceding paragraphs of this

Complaint as if fully set forth here.

12. National Casualty Company had a contractual duty to fairly and reasonably review and pay any claims made with respect to the UM coverage under the policy of the Plaintiff.

13. By refusing to properly consider and pay the fair value of the UM claim made by the Plaintiff, National Casualty Company breached the contractual duties it owed to the Plaintiff.

14. National Casualty Company's breach of contractual duties owed to the Plaintiff has caused the Plaintiff to suffer significant monetary loss and has caused the Plaintiff to incur attorney's fees.

15. Therefore, Plaintiff demands and is entitled to recover against National Casualty Company sums sufficient to compensate him for all damages arising from the injuries suffered by the Plaintiff in this accident as may be shown by the Plaintiff and for all attorneys' fees and costs incurred by the Plaintiff in this litigation. Plaintiff further demands and is entitled to all applicable pre and post judgment interest allowed by law.

COUNT II - Common Law Bad Faith

16. The Plaintiff adopts and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth here.

17. National Casualty Company had duties, based in the common law of the State of West Virginia: to respond to the claim of the Plaintiff in good faith and in a timely manner; and to properly address and resolve the claim of the Plaintiff.

18. National Casualty Company breached the duties listed in the preceding paragraphs by wrongfully, negligently, recklessly, willfully, maliciously, intentionally, and in bad faith refusing to offer to compensate the Plaintiff the full and fair value of his claim.

19. National Casualty Company's breach of the above-described duties directly and proximately caused the Plaintiff to suffer significant losses and damages, including but not limited to, attorneys' fees and costs.

20. Therefore, the Plaintiff is entitled to and demands sums sufficient to compensate him for the actual losses he incurred as a result of National Casualty Company's above-described breach of duties; punitive and exemplary damages as a result of National Casualty Company's malicious, intentional, wrongful, untimely, and bad faith actions; attorneys' fees and costs and court costs incurred in this action; and, all applicable pre and post judgment interest.

COUNT III - Violation of Unfair Claims Settlement Practice

21. The Plaintiff adopts and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth here.

22. Pursuant to W. Va. Code §33-11-1 *et seq.* and other provisions of West Virginia law, National Casualty Company owed the Plaintiff the duty to review, reasonably investigate and decide the Plaintiff's request for payment of his damages in a fair and good faith manner, and to effectuate a prompt, fair and equitable settlement of Plaintiff's claim.

23. By wrongfully, willfully, maliciously, and intentionally refusing to properly consider the Plaintiff's claim for payment of damages in a fair and good faith manner, and effectuate a prompt, fair and equitable settlement of the Plaintiff's claim, National Casualty Company violated the applicable statutes and provisions of law, and breached its duties to the Plaintiff not to act in such a manner.

24. Under the law of this State and pursuant to National Casualty Company's duty to refrain from unfair trade practices, National Casualty Company did not fully and fairly evaluate the Plaintiff's claim for payment under the UM coverage of the policy, and further wrongfully refused

to make a fair and equitable payment on such claim to the Plaintiff.

25. It was a breach of National Casualty Company's duty to refrain from engaging in such unfair trade practices

26. Upon information and belief, and pursuant to other complaints filed against National Casualty Company, it's actions constitute more than a single violation of the applicable statutes, including W.Va. Code §33-11-1 *et seq.* and other applicable provisions of law. Further, upon information and belief, the violations arise from separate, discrete acts or omissions in it's practice and arise from it's habit, custom, usage and business policy. Upon information and belief, such violations are sufficiently pervasive and sanctioned by National Casualty Company so as to be a general business practice of National Casualty Company and can be fairly distinguished from an isolated event.

27. Therefore, the Plaintiff is entitled to and demands sums sufficient to compensate it for the actual damages he has incurred as a result of Nation Casualty Company's above-described breach of duties; punitive and exemplary damages as a result of National Casualty Company's wrongful actions; attorneys' fees and court costs incurred in this litigation; as well as all applicable statutory damages and remedies; and, all applicable pre and post judgment interest.

WHEREFORE, Plaintiff demands as follows:

That the Plaintiff be awarded judgment in an amount sufficient to fully and fairly compensate him for his damages; that National Casualty Company be found to have breached its above-described contractual duties to the Plaintiff; that National Casualty Company be found to have breached its above-described common law and statutory duties to the Plaintiff; that National Casualty Company be found liable to have committed unfair trade and claims practices with respect to the Plaintiff and others; and that National Casualty Company be ordered to pay the Plaintiff such compensatory damages as will compensate the Plaintiff for his actual losses including but not limited to attorneys' fees and costs, court costs regardless of the policy limit; that National Casualty Company be ordered to pay the Plaintiff all punitive damages allowed by law as a result of National Casualty Company's wrongful and intentional refusal to consider and pay his claim for damages in good faith; that National Casualty Company be ordered to pay the Plaintiff's attorneys' fees incurred in this litigation, and all other costs and expenses associated with this litigation; and, that National Casualty Company be ordered to pay the Plaintiff all applicable pre and post judgment interest.

Plaintiff demands a trial by jury.

CHARLES W. FERGUSON
PLAINTIFF
BY COUNSEL

NELSON M. MICHAEL, L.C.

BY: ______________________

NELSON M. MICHAEL
WVSB ID# 2545
POST OFFICE BOX 59
126 EAST STREET
KEYSER, WV 26726
(304)-788-6503

TESTE COPY
CIRCUIT COURT
SEAL
MINERAL CO. WEST VIRGINIA
Clerk Circuit Court of Mineral County, W. Va.